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New York

SUMMARY RECORD OF THE 5TH MEETING

Chairman:	Mr. ZARIF	(Islamic Republic of Iran)
later:	Mr. TOMKA (Vice-Chairman)	(Czechoslovakia)
later:	Mr. ZARIF (Chairman)	(Islamic Republic of Iran)

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The meeting was called to order at 3.10 p.m.

AGENDA ITEM 131: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-FIFTH SESSION (continued) (A/47/17; A/47/454)

1. Mrs. ZAZOPULOS (Chile) noted that the current session coincided with UNCITRAL's twenty-fifth anniversary and with the United Nations Decade of International Law, which was the reason why a week had been set aside for holding the Congress on International Trade Law which had been extraordinarily successful.

2. UNCITRAL had made considerable progress in its consideration of articles 16, 17 and 18 of the draft Model Law on International Credit Transfers. Article 16, on the rules regarding liability for failure to execute the payment order, had been widely discussed, since it proposed criteria for objective and subjective liability. The question whether liability derived from failure to execute or unjust enrichment had also been analysed. At the time, Chile had argued in favour of retaining the concept of the objective liability of banks in international credit transfers, which had no need of concurrent fault or proof. In order to balance the assumption of such liability, indirect loss should be excluded and liability should be limited to the payment of interest. That had been the prevailing view in the Commission, which had set up a drafting group consisting of a number of countries, including Chile, to draft final text. The group had prepared a new text of article 16, consisting of eight paragraphs, which had been approved by the Commission and had become the present article 17 of the Model Law. Paragraph 8 of the original text had become a new article 18.

3. Regarding article 17, which UNCITRAL had examined next, the most controversial issue had been the second paragraph, concerning discharge of the underlying obligation through the execution of the international credit transfer. Such transfers could have as their antecedent an underlying contractual relationship between the originator and the beneficiary in which the transfer was used as a mechanism to discharge an obligation issuing from that underlying relationship. Nevertheless, there were many instances in which that was not the case. It was therefore necessary to reaffirm the principle that the credit transfer was an abstract operation, independent of the purpose for which it was made, autonomous in its effects and without consequence for the fundamental or underlying relationship between the originator and the beneficiary. On those grounds, Chile had proposed that paragraph 2 of article 17 should be deleted. That had been the prevailing view, and a proposal had been made to delete the paragraph in question and to include it as a footnote for those States promulgating the Model Law which wished to incorporate it in their national legislation. The drafting group had prepared the footnote and the final text of article 17, which had become the present article 19 of the Model Law.

(Mrs. Zazopulos, Chile)

4. There had been some question regarding the deletion or retention of article 18, in the Model Law. It was true that, if it was deleted, the Model Law would be without a rule on conflict of laws, but at the same time the gap could be filled by a convention prepared under the auspices of the Hague Conference on Private International Law, which already had the item in its work programme. In that way, in addition to obtaining the desired legal provision, the aim of cooperation between UNCITRAL and other international bodies in the joint task of unifying international trade law would be reinforced.

5. Her delegation believed that the Model Law answered the purpose of the progressive harmonization and unification of the law governing international trade, in which an appreciable percentage of payments were made through international credit transfers, either electronically or in writing. Such a speedy, safe and suitable mechanism would speed the rate of operations and would protect the interests of both developing and developed countries. Chile was confident that in the near future it would possess legislation which reflected the Model Law. It proposed to disseminate the content of that legislation through conferences, seminars and round tables, and to involve the Law and Economics Faculties of various universities in those and other activities, as well as promoting research into the topic.

6. Regarding the Legal Guide on International Countertrade Transactions, she said that her delegation had played an active role in drafting the Spanish text with a view to ensuring the correct use of the legal terminology. Chile considered that, although the Guide had no binding legal force or unifying function, it did represent an instrument that would help the parties concerned in drawing up appropriate countertrade contracts.

7. Regarding the legal problems posed by electronic data interchange, her delegation recalled that, in general, the law responded with some delay to the demands made on it by society. Fortunately, in the case of electronic data interchange, it was doing so in parallel with the needs arising from trade operations. Chile attached great importance to electronic communications and data processing and was therefore in favour of a timely and generalized legal regime that would apply to most nations and would promote the speed and safety of economic and trade exchanges.

8. With regard to the draft model law on procurement, it was to be hoped that the work would be finally completed and that the draft could be approved at the twenty-sixth session of UNCITRAL to be held in Vienna in 1993. The future model law was a set of uniform rules which balanced the interests of all the parties concerned in contracts of that type.

9. The same was true of guarantees and stand-by letters of credit. Chile frequently resorted to the assistance of international firms for the conduct of important public or private works. The guarantee of the signing of the contract awarded and security as to the complete execution and functioning of

(Mrs. Zazopulos, Chile)

the work in question required a uniform law which provided adequate protection for the property interests of the State and of the firms concerned in the case of non-execution.

10. On a different topic, her delegation recalled resolution 46/56 B of the General Assembly, in which the Fifth Committee was requested to consider granting travel assistance to the least developed countries that were members of UNCITRAL to enable them to participate fully in its work, and the recommendation that UNCITRAL should rationalize the organization of its work and consider, in particular, the holding of consecutive meetings of its working groups.

11. Lastly, as indicated in its joint declaration with the other countries of the Rio Group, Chile urged the holding of an international congress of public law which would make use of the valuable human resources of the international legal community.

12. Mr. ORDZHONIKIDZE (Russian Federation) said that the UNCITRAL Congress on International Trade Law, conceived as a contribution by the Commission to the United Nations Decade of International Law, had been a significant event and had provided an opportunity for in-depth discussion of the progress made towards unifying and harmonizing trade law over the 25 years of UNCITRAL's existence, as well as of the outlook for its future work.

13. One of the Commission's achievements at its last session had been its approval of the draft Model Law on International Credit Transfers, which had laid the foundations for unifying the legislation of different countries in the area of credit transfers by electronic or documentary means. Mention should also be made of the work done on the Legal Guide on International Countertrade Transactions and on the question of the new international economic order. The importance of UNCITRAL's work was evidenced in the fact that there was increasing discussion of the rules it had drawn up. Thus, at present, 34 States were parties to the Convention on Contracts for the International Sale of Goods; 86 had adhered to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards; 13 had signed the Convention on the Limitation Period in the International Sale of Goods, and seven countries, in addition to four states in the United States, had enacted legislation based on the UNCITRAL Model Law on Arbitration. It went without saying that the participation of States in the various agreements sponsored by UNCITRAL must be increased.

14. On 24 December 1991, the Russian Federation had declared itself the successor to the former Soviet Union; as of that date, it had assumed the obligations and rights established in the Charter and other United Nations instruments, including those approved in the context of UNCITRAL. It believed that other States of the Commonwealth of Independent States would also be able to make their own contribution with a view to fostering further cooperation in the field of international law.

(Mr. Ordzhonikidze, Russian Federation)

15. The Russian Federation felt that the work of UNCITRAL had, on balance, been positive. None the less, at the Congress on International Trade Law, certain questions had been brought up that needed to be addressed, including the matter of regulating various aspects of the transactions involved in the trade of goods. Thus, for example, it would be advisable to draw up rules designed to complete the existing texts on certain matters that had not been sufficiently covered in the Convention on Contracts for the International Sale of goods, signed in Vienna in 1980.

16. One of those matters was the problem of responsibility for the quality of goods or of products which had been the subject of an international sale, based on written guarantees contained in the terms of the contract. Although that question had been mentioned during the discussions on the Vienna Convention, the guarantees had not been established in written form. Obviously, any rules drawn up on that matter would, like the Convention itself, be applicable in a subsidiary fashion.

17. Another subject that should be dealt with was that of the unification of the regime pertaining to penalty clauses or fines for non-compliance of a contract. In 1983, UNCITRAL had drawn up certain rules in that regard, but discussion of the matter had been postponed because of lack of support. His delegation wished to propose that the matter should be studied again in the framework of economic and commercial cooperation.

18. In addition, and with a view to furthering the unification of international trade law, efforts should be made to promote the development of commercial arbitration; in that regard, it would be advisable to work for the regular use of commercial arbitration in different transactions, such as the transfer of documents.

19. Other organizations were also working on the drafting of legal texts; some of them even offered countries financial and technical assistance in developing trade legislation. In order to ensure the uniformity of legal systems and to meet the need for economic progress of the developing countries and the States with transitional economies, UNCITRAL should continue its work and invite other organizations to cooperate in efforts to harmonize international trade law. In that regard, he asked that the secretariat regularly inform UNCITRAL of the work being done by other organizations in that field.

20. Miss KETE (Côte d'Ivoire) said that her delegation welcomed the approval of the Model Law on International Credit Transfers and the Legal Guide on International Countertrade Transactions. The need for the Model Law was obvious, especially since it applied to both electronic and documentary transfers. The Legal Guide would be very useful to the developing countries, which were resorting more and more to countertrade transactions, because of currency fluctuations, deteriorating terms of trade, and indebtedness.

(Miss Kete, Côte d'Ivoire)

21. Her country noted with satisfaction that UNCITRAL had recognized the need to discuss the legal aspects of electronic data interchange and to draw up practical rules in that regard, without taking a stand as to what the final wording and content of the rules would be. It also welcomed the progress that had been made regarding public contracts and stand-by letters of credit.

22. Nevertheless, in its work, UNCITRAL should not only pursue the objective of effectiveness; it should also seek to promote justice and fairness, bearing in mind the interests of the developing countries. Beyond the discussion between proponents of common law and of Roman law, it was important to address the situation of the poor countries, which, regardless of what their legal tradition might be, were suffering the consequences of a disastrous economic situation and therefore needed international economic cooperation in harmonizing and unifying trade law and, hence, their own development.

23. In that regard, her delegation welcomed the holding of the UNCITRAL Congress on International Trade Law, which had offered specialists on the subject the opportunity to discuss the results obtained in furthering the progressive harmonization and unification of the law of international trade. Along the same lines, consideration should be given to the possibility of having UNCITRAL offer its assistance to all developing countries in order to enable them to participate in its work or, alternatively, provide for a rotation system of assistance.

24. Mr. DELON (France) said that the Model Law on International Credit Transfers approved at the twenty-fifth session of UNCITRAL represented a significant contribution to the establishment of a unified legal framework that would be applicable to all international transfers, whether by electronic or by documentary means; it sanctioned the increasing use of transfers as a means of payment in international trade, and would make it possible to develop harmonious international economic relations between States having different legal, social and economic systems. It would also fill the legal vacuum in which electronic transfers of funds were currently carried out.

25. UNCITRAL also had reason to be proud of the fact it had approved the Legal Guide on International Countertrade Transactions. The Guide would be very useful to all the parties involved in countertrade transactions, which currently accounted for a considerable share of international trade.

26. The UNCITRAL Congress on International Trade Law had provided an opportunity to evaluate the work done by UNCITRAL and to outline the prospects for further development of international trade law. His delegation also welcomed the regional seminars organized recently in Fiji, on training in international trade law, and Mexico, on international commercial arbitration.

27. The continuation of the work of the Working Group on International Contract Practices, particularly the preparation of a text on independent

(Mr. Delon, France)

guarantees and stand-by letters of credit, was of central importance and would contribute to the standardization of counterpart mechanisms and help provide the increased confidence needed to boost trade flows.

28. The preparation of the draft Model Law on Procurement was also very important since it would provide encouragement for States which were willing to reform their procurement laws and help avert further discrepancies.

29. Finally, the Working Group dealing with the legal issues of electronic data interchange had made important progress during the twenty-fifth session, notably in devising a flexible approach to the problems concerned and in developing cooperation between the various international organizations dealing with the question (the Economic Commission for Europe, the European Communities and the International Chamber of Commerce). In future years the Working Group should concentrate its main efforts on the formation of contracts, the question of evidence and third-party liability.

30. UNCITRAL was becoming a vital body in the establishment and development of international trade law and it was to be hoped that the Working Group on Electronic Data Interchange would continue its work for the benefit of the international community.

31. Ms. LI Yanduan (China), referring to the draft Model Law on International Credit Transfers, said that her Government felt that liability and damages were an objective question, in other words the obligation of a receiving bank to compensate for loss of interest should not depend on whether the credit transfer had been properly or improperly executed.

32. UNCITRAL had begun work on the draft Legal Guide on International Countertrade Transactions in 1988. The Legal Guide basically covered all forms of countertrade currently in practice and, while not favouring or encouraging international countertrade, would help to establish equitable and balanced contractual relations among States engaged in it. Countertrade represented a substantial part of her country's trade activities and the Legal Guide would play a highly useful role in guiding her own and other third-world countries in countertrade transactions, as well as helping other countries and regions.

33. INCOTERMS 1990, which had been submitted to UNCITRAL for its approval by the International Chamber of Commerce, would play an important role in regularizing and facilitating trade and in promoting international trade and development.

34. The holding of the UNCITRAL Congress on International Trade Law had borne witness to the Commission's important achievements in the harmonization and unification of international trade law since its founding twenty-five years earlier. A series of international treaties and legal documents drafted and

(Ms. Li Yanduan, China)

harmonized by UNCITRAL had become increasingly influential in the field of international trade, most notably the United Nations Convention on Contracts for the International Sale of Goods. It had also drafted such documents as the Model Law on International Credit Transfers and the Model Law on Procurement.

35. Thanks to the work of UNCITRAL and other international organizations in recent decades, the unification of international trade law had made great headway overcoming the obstacles created by the diversity of the laws of different States. Her Government hoped that UNCITRAL would continue its work on the harmonization and unification of international trade law.

36. Her delegation felt that provisions should be made to cover the travel expenses of delegates from developing countries, especially the least developed, so that members from all regions and all economic and legal systems could participate fully in the Commission's work.

37. The modernization of her country was contingent on the strengthening and expansion of its economic and trade cooperation with other countries and on the existence of a sound legal environment. Her Government attached great importance to the Commission's work and was ready to contribute towards a unified and coordinated international trade environment.

38. Mr. MOHAMMED (Nigeria) said that the report of UNCITRAL on the work of its twenty-fifth session clearly showed that the Commission was effectively discharging its responsibility as the core legal body on international trade law within the United Nations system. He noted that his own country had signed or ratified a number of conventions and model laws drawn up by UNCITRAL.

39. The participation of experts from all member countries at UNCITRAL sessions would greatly enhance the universal character of the conventions or model laws it was drafting, and it was therefore important to try and find ways and means of assisting experts from developing countries so as to enable them to participate in the sessions of the Commission and its working groups.

40. The holding of the UNICTRAL Congress on International Trade Law during the twenty-fifth session had been an important achievement and he urged the Secretariat to make efforts to publish the proceedings of the seminars to enable practitioners and researchers to benefit from them, particularly those from developing countries.

41. The adoption of the Model Law on International Credit Transfers and the drafting of the Legal Guide on International Countertrade Transactions would contribute significantly to the development of harmonious international economic relations and would assist developing countries involved in countertrade transactions.

(Mr. Mohammed, Nigeria)

42. The debt crisis facing developing countries remained a major obstacle to economic growth. The falling price of the commodities exported by most developing countries had yet to be fully addressed. The vulnerability of developing countries in multilateral trade negotiations continued to be exploited. He hoped that UNCITRAL would continue to produce instruments that would enable nations to resolve their problems in the field of international trade law.

43. The present trend, where barriers to trade and the growing disparity between rich and poor nations were creating economic and political instability, should not be allowed to continue. The questions of economic inequalities and discriminatory terms of trade among nations needed to be addressed in a timely manner.

44. Mr. MOLNAR (Hungary) said that it was his delegation which had proposed the inclusion of a new item in the provisional agenda of the nineteenth session of the General Assembly, which had led to the establishment of UNCITRAL two years later at the twenty-first session of the General Assembly. He noted with satisfaction that the holding of the UNCITRAL Congress on International Trade Law had provided an opportunity to take stock of the Commission's achievements and of the tasks to be undertaken in the future. The report of UNICTRAL on the work of its twenty-fifth session was a further indication of the importance of its activities.

45. One of the major achievements of the twenty-fifth session had been the adoption of the Model Law on International Credit Transfers, which would provide a useful basis for national legislation on the subject.

46. While not encouraging countertrade, the Legal Guide on International Countertrade Transactions would be helpful to countries involved in such transactions.

47. He welcomed the Commission's intention to identify the legal issues of electronic data interchange and to develop practical rules in that field.

48. His country attached great importance to the work undertaken on the legal aspects of procurement and noted with satisfaction that the Working Group on the New International Economic Order had completed the drafting of a Model Law on Procurement which would be considered by UNCITRAL at its next session.

49. The training and assistance activities in the field of international trade law were very important and he supported the Secretariat's efforts to carry out an extensive programme of training and assistance aimed at making the achievements of the Commission more widely known.

50. Mr. TOMKA (Czechoslovakia), Vice-Chairman, took the Chair.

51. Mr. MARTENS (Germany) said he was pleased to note that during the year under review the Commission had completed the Model Law on International Credit Transfers and the Legal Guide on drawing up International Countertrade Transactions at its twenty-fifth session. That session had culminated in the Congress on International Trade Law - the UNCITRAL contribution to the activities of the United Nations Decade of International Law - which afforded the Commission an opportunity to take stock of its accomplishments and to develop ideas about its future work. His delegation expressed the hope that UNCITRAL would find a way to publish at least the principal papers presented at the Congress and the statements of the "voices of international practice" in an appropriate format, for instance its yearbook. The Congress documented impressively that UNCITRAL was the only globally recognized and globally active institution for the harmonization and unification of international trade law.

52. With respect to the Model Law on International Credit Transfers, his delegation referred to liability for interest, the completion of credit transfers, revocation and other very specific legal questions to illustrate the professional calibre and substance that had marked the deliberations of the Commission and the possible economic significance of the Model Law if it found broad recognition and application in the States Members of the United Nations. Of course, given the complexity of the subject-matter, the disparate interests of the economic and commercial circles participating, and the different legal traditions of the States collaborating on the Model Law, it was difficult to reach a solution acceptable to all. His delegation hoped that UNCITRAL had succeeded in crafting rules that were sufficiently transparent, acceptable to both banks and their customers, and in keeping with the general legal precepts of the participating States. It would therefore be glad to see the Sixth Committee and the plenary of the General Assembly support the recommendation contained in paragraph 82 of the UNICTRAL report.

53. Germany supported the Legal Guide on International Countertrade Transactions; at the same time, although countertrade accounted for an appreciable share of international trade, it nevertheless entailed certain disadvantages.

54. With regard to the legal problems inherent in electronic data interchange in international trade, the Commission had already pointed out the need for coordination between the various international organizations that likewise dealt with those problems, so as to avoid duplication of effort.

55. In paragraph 3 of its resolution 46/56 B, the General Assembly had requested the Commission to rationalize its work. His delegation shared the Commission's misgivings as to the possibility of achieving cost savings by scheduling consecutive working group sessions. First of all, the Commission should determine whether the Congress and its results did not eo ipso give rise to a review of the work programme and so make cost savings possible. Appeals had already been made to UNCITRAL and its working groups to review their work schedules and work programmes in the light of subsequent changes.

(Mr. Martens, Germany)

His delegation considered a further streamlining of the Commission's work possible, though care must be taken not to jeopardize its efficiency.

56. UNCITRAL was the only international forum dealing on a high level of competency with questions of international trade in which all regions of the world were represented. Its reputation as a neutral and impartial institution for the development of uniform trade law for the future world flowed from the principle of decisions by consensus. That reputation would be maintained if it continued to work in the same spirit.

57. Mr. CHATURVEDI (India) said that his country, which had been a member of UNCITRAL since its inception in 1966, had always taken a keen interest in its extensive and excellent work in progressively harmonizing and unifying international trade law. The hallmark of the twenty-fifth session of UNCITRAL had been the completion of two major texts, the draft Model Law on International Credit Transfers and the Legal Guide on International Countertrade Transactions, as well as the holding of the Congress on International Trade Law on the theme of uniform commercial law in the twenty-first century, which had been designed as a contribution by the Commission to the activities of the United Nations Decade of International Law.

58. The Model Law on International Credit Transfers, which applied to cases where the sending bank and the receiving bank were in different States, did not deal with debit transfers. The Model Law was meant for use by national legislatures and, although it was restricted to international credit transfers, it was possible for a State to apply it to domestic credit transfers, which were regulated by the relevant domestic law on banking transactions. The incorporation of the Model Law into any domestic system might disturb the well-settled banking practices and customs of each country. That concern had been expressed by delegates from many developing countries since, for lack of adequate support, proper safeguards had not been built into the Model Law.

59. The Legal Guide on International Countertrade Transactions had been prepared in the awareness that parties engaging in countertrade might lack relevant legal knowledge and experience, and that as a result they might not find optimal contractual solutions to legal issues that could arise in countertrade transactions. Those issues arose in particular from the fact that countertrade transactions were composite transactions encompassing the supply of goods in two directions, that there was a contractual link between the two sales, and that countertrade transactions often contained commitments by parties to enter into further contracts. National legislations generally did not contain provisions specific to countertrade. Legal difficulties in that area could adversely affect parties from developing countries as well as from industrially developed countries, in particular if they did not regularly engage in countertrade. His delegation hoped that the Legal Guide would be particularly useful to developing countries, which had been facing

(Mr. Chaturvedi, India)

balance-of-payment difficulties. It was to be hoped that the Guide would help in the elaboration of an international legal instrument on countertrade, which was steadily gaining in importance.

60. At the invitation of UNCITRAL, many countries had participated in the Congress on International Trade Law to consider the accomplishments achieved in the progressive unification and harmonization of international trade law during the previous 25 years and the needs that could be foreseen for the next 25 years. India believed that UNCITRAL, owing to its universal membership and general mandate as the core legal body of the United Nations system in the field of international trade law, should formulate legal norms and rules on the use of electronic data interchange, which was becoming increasingly important.

61. Finally, his delegation highly appreciated the useful work being done by UNCITRAL in training and assistance in the field of international trade law, especially for developing countries, and supported its efforts to help developing countries to participate in the meetings of UNCITRAL and its various working groups.

62. Miss BOUM (Cameroon) noted that UNCITRAL had made great progress in carrying out its mandate, since during the latest session it had finished its work on international credit transfers and international countertrade transactions, adopting in the former case a draft Model Law and in the latter a draft Legal Guide, both of which had been submitted for approval to the Sixth Committee.

63. The draft Model Law on International Credit Transfers was the third legal instrument on international payments developed by the working group since the United Nations Convention on International Bills of Exchange and International Promissory Notes and the UNCITRAL Legal Guide on Electronic Funds Transfers. The Legal Guide on International Countertrade Transactions supplemented the Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works.

64. With regard to the drafting of a Model Law on Procurement, the progress made during the latest session of the Working Group on the New International Economic Order would no doubt allow UNCITRAL to examine and approve the final text - as well as the relevant commentary, which was designed to help States to prepare legislation based on the Model Law - during the session to be held in June 1993.

65. Her delegation hoped that, after completing its second reading of the draft articles already considered, the Working Group on International Contract Practices would approve a final text of the draft uniform law on guarantees and stand-by letters of credit which would be acceptable to all.

(Miss Boum, Cameroon)

66. In order to ensure uniform interpretation and implementation of the instruments it proposed, UNCITRAL had adopted a system for compiling and disseminating information on court decisions and arbitral awards. Her delegation hoped that that system would make it possible to avoid contradictory interpretations by the various courts and arbitral bodies, which diminished the legal value of the texts approved.

67. As a developing country, Cameroon attributed great importance to UNCITRAL's training and assistance activities. For that reason, it was glad that UNCITRAL had decided in 1987 to give them greater priority than in the past and that the Secretariat had also decided to organize or cosponsor seminars and symposiums, particularly for the developing countries.

68. For its part, Cameroon, which had been a member of UNCITRAL since 1989, had in 1991 been host to a regional seminar on international trade law and had a special interest in UNCITRAL's activities. Like other developing countries, however, it was unable to ensure that its experts attended all the meetings of UNCITRAL and its working groups. It therefore particularly welcomed the proposal by UNCITRAL's secretariat that assistance, for that purpose should be given to the developing countries that were members of the Commission and the Secretary-General's report on the subject (A/46/349).

69. In spite of the novel character of General Assembly resolution 45/56 B on that subject, his delegation was sure that the Assembly would be able to find an appropriate solution to the problem during its current session.

70. The most important event of UNCITRAL's twenty-fifth session had been the holding of the Congress on International Trade Law, the first of its kind to be carried out under UNCITRAL's auspices. The success of the Congress was yet another proof of the vitality and efficiency of UNCITRAL's secretariat.

71. Mr. ZARIF (Islamic Republic of Iran) resumed the Chair.

72. Mr. DROUSHIOTIS (Cyprus) expressed approval of the Sixth Committee's practice of considering UNCITRAL's report as its first substantive item. He welcomed the Commission's adoption of its Model Law on International Credit Transfers and its Legal Guide on International Countertrade Transactions and the holding of the important event of the Congress on International Trade Law during the last week of its session.

73. UNCITRAL's Model Law on International Credit Transfers contributed significantly to the establishment of a unified legal framework applicable to international credit transfers whether electronic or in paper-based form and it was to be hoped that States would give it consideration when enacting or revising their laws on the subject. With respect to the Legal Guide, there was considerable countertrade activity among developing countries and the Guide would significantly assist parties in establishing fair and balanced contractual relations. It was to be hoped that the Guide would be given widespread distribution and promotion.

(Mr. Droushiotis, Cyprus)

74. He welcomed the fact that UNCITRAL's work on procurement was nearing completion and hoped that the Commission at its next session would have before it a draft Model Law for finalization and adoption.

75. He also welcomed the establishment of the system for collecting and disseminating information on decisions and arbitral awards relating to normative texts emanating from the work of the Commission, and looked forward to the publication of the first set of abstracts of court decisions.

76. He expressed appreciation of the efforts made by the Commission in the coordination of its work with other organizations, as its coordinating role was an essential element in the unification and harmonization of international trade law. In that connection, he underlined the fruitful cooperation between the Commission and the Asian-African Legal Consultative Committee, of which Cyprus was a member.

77. His delegation was pleased to note the developments referred to in the Commission's report with respect to the status of conventions prepared by UNCITRAL, which indicated the steady increase in the acceptance by States of the legal texts prepared by the Commission.

78. He also reaffirmed the importance, in particular to the developing countries, of the Commission's work in training and assistance. It was gratifying to note that the Secretariat was intensifying even further its efforts to organize or cosponsor seminars and symposiums on international trade law and thanked the countries which had hosted seminars and symposiums as well as those which had made financial contributions towards financing them. Cyprus for its part had again contributed in 1992 to the funding of those activities.

79. His delegation fully supported the granting of travel assistance to least developed countries that were members of the Commission and agreed with the views and conclusions on that subject expressed by UNCITRAL at its twenty-fifth session.

80. Mr. ABOUL MAGD (Egypt) said that his country, as a member of UNCITRAL, followed with great interest its efforts to unify international trade law by the preparation of model laws and other legal instruments to facilitate international trade. UNCITRAL's work in the past 25 years was worthy of praise and encouragement.

81. His country had adhered to or ratified all the conventions and agreements prepared by UNCITRAL. It was, moreover, in the process of approving legislation on commercial arbitration which was based on UNCITRAL's Model Law on International Commercial Arbitration.

82. It was also to be emphasized that UNCITRAL's conclusion of the preparation of its draft Model Law on international credit transfers constituted a fitting conclusion to its 25 years of work on the subject, as

(Mr. Aboul Magd, Egypt)

the Model Law would greatly assist many States which lacked national legislation on the subject and would contribute to the unification of the separate systems dealing with it.

83. During its twenty-fifth session, UNICTRAL had also completed its draft legal guide to international countertrade transactions, a significant achievement in the light of the enormous number of such transactions which were carried out in international trade. His delegation hoped that the use of the Guide would improve the prospects of the developing countries and their enterprises for competing in international markets by eliminating the obstacles and difficulties they encountered.

84. He welcomed the attention UNCITRAL had given to training and assistance, which was a vital part of its work. While welcoming UNCITRAL efforts to organize training courses and seminars within its financial means, he expressed the hope that they would be given greater support as countries become more aware of the importance of the legal texts prepared by UNCITRAL, the implementation of which depended on the existence of jurists prepared to use them.

85. The holding of UNCITRAL's Congress on International Trade Law had made an outstanding contribution to the United Nations Decade for International Law and given many lawyers, professors and judges specializing in international law an excellent opportunity to analyse the possibilities for unifying international trade law.

86. His delegation was concerned that the participation of fewer States in the work of UNCITRAL and its working groups might mean that the legal texts it prepared did not reflect all legal systems. For UNCITRAL to carry out effectively its task of unifying international trade law required the active and continuous participation of the greatest possible number of States in the preparation of those texts. Although he was aware of the inadequacy of UNCITRAL's financial resources, he felt that the results of its work were affected by the degree of participation of States in that work. He was confident that UNCITRAL would examine the means by which greater participation could be achieved.

87. Mr. HAMAI (Algeria) said that reviewing the UNCITRAL report was always a highly satisfying experience because of the quality of the Commission's work, and the report of its twenty-fifth session was no exception. It had been proven once again that UNCITRAL was the major legal body of the United Nations in the area of international trade law.

88. At its latest session, UNCITRAL had adopted important texts like the Model Law on International Credit Transfers and the Legal Guide on International Countertrade Transactions, and by recommending the use of INCOTERMS 1990 as revised by the International Chamber of Commerce it had done much to facilitate international trade.

(Mr. Hamai, Algeria)

89. On the question of training, it was to be noted with satisfaction that UNCITRAL was planning to intensify its efforts to organize further seminars and symposia on international trade, especially for developing countries.

90. It was also a source of satisfaction that UNCITRAL had organized a Congress on International Trade Law as its contribution to the activities of the United Nations Decade of International Law, for the purpose of considering the accomplishments of the past 25 years and the needs for the next 25 years. Nevertheless, it was distressing to note that 75 per cent of the participants had come from developed countries, with the African continent, for example, represented by only five participants. The low representation of the developing countries was not due to a lack of interest but was the direct result of a lack of funds. It should be added that such low representation was not an isolated instance but was, on the contrary, a constant in all UNCITRAL activities. It was therefore to be hoped that the Committee would give favourable consideration to the question, taking into account the provisions of General Assembly resolution 46/56 B and the relevant report of the Secretary-General (A/47/454), and would recommend that the Assembly should authorize the necessary steps to allow representatives of the developing countries to participate effectively in the work of the Commission and its working groups.

91. Mr. YAMAMOTO (Japan) said that UNCITRAL, in whose work his country participated actively, had made valuable contributions in the field of international business transactions. In no small measure, the Commission's excellent accomplishments were due to the fact that it conducted its work from a strictly legal and technical viewpoint.

92. With regard to the draft Model Law on International Credit Transfers, there was a growing tendency to use such transfers instead of drafts or checks in international business transactions, but there were few laws regulating credit transfers and the legal positions of Governments were often not compatible. Thus, the adoption of the Model Law would facilitate international business transactions and enhance the Commission's position as the central organ in the effort to unify private law.

93. As to the draft Legal Guide on International Countertrade Transactions, it identified various problems and suggested ways of resolving them to those engaged in such transactions.

94. The Working Group on International Contract Practices was working on a uniform law on guarantees and stand-by letters of credit. The uniform law should be formulated in such a way as to balance the divergent interests of the parties concerned and, in particular, the draft articles on jurisdiction and provisional court measures should be considered carefully.

95. Lastly, his delegation welcomed the completion of the work on the draft Model Law on Procurement, which was to be considered further at the Commission's next session, and the convening of the Congress on International

(Mr. Yamamoto, Japan)

Trade Law, which had provided an opportunity to discuss past accomplishments and plan future work on the unification of private international law.

96. Mr. DE SARAM (Sri Lanka) said that the UNCITRAL report dealt principally with two matters: first, the description of the substantive work being done by the Commission in harmonizing and bringing uniformity to international trade law and, secondly, the expression of a deep concern for sparing no efforts to increase the awareness of its work, its programmes and the texts it prepared.

97. As examples of the first, there were the now completed Model Law on International Credit Transfers and the work on the draft Legal Guide on International Countertrade Transactions, the draft Model Law on Procurement and the draft of a uniform law on guarantees and stand-by letters of credit. Given the specialized nature of the subject-matter, not much could be said in that area except to note that the work of the Commission was proceeding speedily and well. It would perhaps be helpful if the texts prepared by UNCITRAL were accompanied in every case by commentaries or explanatory memoranda that would facilitate their consideration by those not familiar with the work of the United Nations.

98. The UNCITRAL report also reflected the Commission's deep and justified concern - undoubtedly shared by the Committee - that every endeavour should be made, within available financial resources, to widen the circle of those having adequate substantive awareness of the work of UNCITRAL. By way of example, there was a Commission's endorsement and dissemination of the INCOTERMS 1990 of the International Chamber of Commerce, the designation of national correspondents, the seminars held, the case-law collections, and the coordination with other bodies dealing with international trade law matters.

99. The Committee should study the possibility of allowing more time at its next session than the three meetings currently allotted to the review of the UNCITRAL report.

100. Mr. MONTES DE OCA (Mexico) said that one of the most debated issues in the Commission had been that of the relatively low participation of developing countries in the meetings of UNCITRAL and its working groups. Financial assistance would be of inestimable value in alleviating that problem. It might also be interesting to investigate the reasons that led experts to participate assiduously and positively in the Commission's work. Perhaps in the case of the Chairman of the Commission those reasons were professional. It was his understanding that the UNCITRAL Chairman was himself ready to share his knowledge and experience with the members of the Committee.

101. Furthermore, his delegation, like others, suggested that efforts should be made to convene a congress on public international law on the model of the UNCITRAL Congress on International Trade Law. Timely publication and dissemination of the results of the Congress on International Trade Law would be useful to allow the members of the international legal community to draw full benefit from it.

102. Mr. ABASCAL ZAMORA (Chairman, United Nations Commission on International Trade Law) thanked the members of the Committee for the attention and interest they had shown in the report and in the proposals made to them for cooperation. He drew attention to the work of the secretariat, which allowed the Commission to continue producing work of high calibre on international trade law.

103. As to the Congress on International Trade Law, the subject of so much interest, he explained that the purpose of that meeting had been not to reach final conclusions but above all to receive instructive suggestions that could be considered in the coming sessions when the programme of work was drawn up. The plans were to publish the statements made at the Congress as an official United Nations publication.

104. Lastly, responding to the representative of Mexico, he said that the experience and dedication with which the UNCITRAL team devoted itself to international trade law had considerably sharpened his own expertise in the field. He was convinced that experts in that field should offer their services to help countries move ahead with the enactment of legislation that would remove the obstacles to trade, provide countries with an entry into international trade and offer confidence and security to the parties concerned. It had been his experience that the developed and developing countries could both take an interest in such a task on an equal footing. With regard to the Mexican representative's request, he would have no objection to sharing his experience and answering any questions that might be raised by the members of the Committee in an informal meeting called for the purpose.

The meeting rose at 5.20 p.m.